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5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ALASKA AT ANCHORAGE  
8

9  
10 HARRY CURTIS LUSK, )  
 )  
11 Plaintiff, )  
 )  
12 vs. )  
 )  
13 UNITED STATES OF AMERICA, )  
 )  
14 Defendant. )

15 \_\_\_\_\_) Case No. 3:10-CV-\_\_\_\_\_

16 **COMPLAINT**

17 COMES plaintiff, through counsel, the law firm of Dillon &  
18 Findley, P.C., for his cause of action against defendant, hereby  
19 alleges as follows:

20 1. During all relevant times alleged herein, plaintiff  
21 Harry Curtis Lusk has been a resident of Fairbanks, Alaska.

22 2. This cause of action arises under the Federal Tort  
23 Claims Act 28 U.S.C. § 1346, 2401 and 2671 *et seq.*  
24

1           3.     This complaint alleges negligence on the part of the  
2 Veterans Administration Hospital employees, contractors and/or  
3 agents in Anchorage, Alaska on April 17, 2007.

4           4.     On information and belief, Dr. George Gates, surgeon,  
5 Dr. Bohler, anesthesiologist, and Dr. Hall, assistant surgeon,  
6 and surgical nursing staff were medical doctors and nurses  
7 employed by, contracted with, or agents of the Alaska VA  
8 Healthcare System & Regional Office (hereafter Veterans  
9 Hospital) in Anchorage, Alaska during all relevant times as  
10 alleged herein.

11           5.     The Veterans Hospital in Anchorage, Alaska (during all  
12 relevant times alleged herein) was part of the United States  
13 Department of Veterans Affairs.  
14

15           6.     On or about April 13, 2009, the claims set forth  
16 herein were presented to the Office of the General Counsel,  
17 Department of Veterans Affairs.     On March 16, 2010, the  
18 Department of Veterans Affairs denied Mr. Lusk's claims.  
19

20                           **ALLEGATIONS OF NEGLIGENCE**

21           Plaintiff realleges paragraphs 1 through 6 as if fully set  
22 forth herein, and further alleges as follows:  
23

24           7.     On April 17, 2007, Mr. Lusk underwent surgery for  
25 repair of damage to his shoulder, namely, open acromioplasty and  
26

1 rotator cuff repair, by Dr. Gates. Dr. Hall assisted in the  
2 operation and Dr. Bohler was the anesthesiologist.

3 8. Mr. Lusk was placed under general anesthesia and  
4 positioned in the "beach-chair" position throughout surgery.

5 9. Post-surgically, Mr. Lusk noted numbness, weakness and  
6 swelling in both hands which progressed over a period of 5 to 6  
7 weeks, to the point he had essentially lost functional ability  
8 to care for himself.

9 10. In June 2007, Mr. Lusk was emergently referred to  
10 Seattle Veterans Hospital for cervical diskectomy and fusion to  
11 prevent further deterioration of the cervical spine. However,  
12 the surgery did not restore his hand function.

13 11. Despite occupational and physical therapy, Mr. Lusk  
14 has not recovered the function in his hands and his activities  
15 of daily living are significantly and permanently limited.

16 12. Mr. Lusk's post surgical condition of central cord  
17 syndrome was caused during the surgery on April 17, 2007.

18 **ALLEGATIONS OF NEGLIGENCE AGAINST THE UNITED STATES**

19 **COUNT I**

20 Plaintiff realleges paragraphs 1 through 12 as if fully set  
21 forth herein, and further alleges as follows:  
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1           13. On information and belief, Drs. Gates, Hall and  
2 Bohner, and the nursing staff involved in the April 17, 2007  
3 surgery were federal employees working on the staff of the  
4 Veterans Hospital in Anchorage on April 17, 2007.

5           14. The United States of America, through the surgeons,  
6 anesthesiologist, and nursing staff owed plaintiff Harry Curtis  
7 Lusk a duty to ensure that he was positioned properly initially  
8 and monitored carefully throughout the surgery. Defendant  
9 failed to exercise the degree of care and/or with a degree of  
10 knowledge or skill possessed by or ordinarily exercised by  
11 medical doctors and nurses trained in the fields of surgery,  
12 anesthesiology and surgical nursing.

13           15. Defendant lacked the degree of knowledge or skill or  
14 failed to exercise the degree of care possessed by or ordinarily  
15 exercised by medical doctors trained in their fields in at least  
16 the following ways: failure to consider preexisting cervical  
17 spinal stenosis and cervical spine disease when positioning  
18 patient for shoulder surgery; failure to ensure safe positioning  
19 and monitoring of position throughout surgery; and/or improper  
20 or inappropriate intubation given this patient's presenting  
21 condition.  
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1           16. As a direct and proximate result of the negligence  
2 above alleged, plaintiff Harry Lusk suffered severe and  
3 permanent personal injuries and disability, past and future  
4 medical expenses, past and future income loss, increased costs  
5 for future household care and assistance with daily living  
6 activities, pain and suffering, emotional distress, and  
7 diminishment of ability to enjoy life's benefits.  
8

9           WHEREFORE, plaintiff prays for the following relief:

10           1. Compensation for all categories of damages allowed  
11 under AS 09.55.570 and AS 09.55.580 in effect as of the date  
12 giving rise to the claims alleged herein in the total amount as  
13 stated on plaintiff's Standard Form 95 dated April 3, 2009;  
14

15           2. Compensation for emotional distress; loss of  
16 consortium; and any other damage suffered as determined at  
17 trial; and

18           3. All costs and other relief deemed just and proper.

19           DATED this 8th day of September 2010, at Anchorage, Alaska.

20                               DILLON & FINDLEY, P.C.  
21                               Attorneys for Plaintiff

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